



Insurance Brokers &
Consultants

FAQs | The Impact of the American Rescue Plan Act of 2021 (ARPA)

EPIC & BRi COBRA Subsidies Webinar
Updated: July 28, 2021

Frequently Asked Questions (FAQs)

Subsidy Eligibility

1. Who is an “assistance eligible individual”?

On May 18, 2021 the Internal Revenue Service (IRS) released guidance defining an assistance eligible individual (AEI) as any individual who is (1) a qualified beneficiary as the result of (A) the reduction of hours of a covered employee’s employment or (B) the involuntary termination of a covered employee’s employment (other than by reason of an employee’s gross misconduct), (2) eligible for Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage for some or all of the period beginning on April 1, 2021, through September 30, 2021, and (3) elects the COBRA continuation coverage. This includes qualified beneficiaries who are the spouse or dependent child of the employee who had the reduction in hours or involuntary termination of employment resulting in a loss of coverage, as well as the employee, if that reduction in hours or involuntary termination of employment caused the qualified beneficiary to lose coverage and the other requirements are satisfied.

2. Who is a covered employer?

The premium assistance provisions apply to all private sector group health plan sponsors and unions subject to COBRA under the Employee Retirement Income Security Act of 1974 (ERISA). Further, the rules apply to State and local government plan sponsors subject to continuation under the Public Service Health Act (PSHA) and for group health insurance required under state “mini-COBRA” laws.

3. Does the involuntary requirement apply to both termination and reduction in hours?

The subsidy, also referred to as premium assistance, applies to involuntary terminations regardless of whether those terminations are related to COVID-19 and reduction in hours which the Department of Labor (DOL) defined as hours reduced due to change in a business’s hours of operations, a change from full-time to part-time status, taking of a temporary leave of absence, or an individual’s participation in a lawful labor strike, as long as the individual remains an employee at the time that hours are reduced.

The IRS further clarified that an employee’s reduction in hours causes the qualified beneficiary to be a potential AEI regardless of whether the reduction in hours is voluntary or involuntary. The IRS specifically stated that reductions in hours due to furlough and work stoppage as the result of a lawful strike are reductions in hours.

4. May employers require COBRA qualified beneficiaries to certify or attest that they are assistance eligible individuals?

Yes. Employers may require individuals to provide a self-certification or attestation regarding their eligibility status to receive a premium assistance credit due to an involuntary termination or reduction in hours. Although it is not required to have assistance eligible individuals (AEIs) certify eligibility, it may assist employers to substantiate their entitlement to the premium assistance tax credit. Employers who claim the premium assistance tax credit must retain records of a self-certification or attestation from the AEI.

5. Does the involuntary termination requirement apply only to COVID-related terminations/reduction in hours?

No. Involuntary terminations and reductions in hours can be for any reason and do not need to be related to COVID. In guidance released on May 18, 2021, the IRS clarified that an involuntary termination of employment means a severance from employment due to the independent exercise of the unilateral authority of the employer to terminate the employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services. Further, an employee-initiated termination of employment can in certain circumstances be an involuntary termination of employment for purposes of COBRA premium assistance. The IRS states that if the employee-initiated termination of employment constitutes a termination for good reason due to employer action that results in a material negative change in the employment relationship for the employee, it is analogous to a constructive discharge. The IRS states that whether a termination is involuntary will be a facts and circumstances determination.

6. Do spouses and dependents who are eligible for COBRA due to divorce qualify for the subsidy?

No. The subsidy only applies to individuals who experience a COBRA qualifying event due to an involuntary termination or reduction in hours. Other events such as divorce or a covered dependent child ceasing to be a dependent child are not qualifying events that allow for premium assistance.

7. How do the COBRA rules around termination for "gross misconduct" apply?

Individuals who experience an involuntary termination due to "gross misconduct" are not eligible for COBRA, and therefore are not eligible for premium assistance.

8. Must an employer offer COBRA if the previously terminated employee is currently covered on another employer sponsored plan?

No. Once an assistance eligible individual (AEI) is eligible for other employer sponsored health coverage, they are no longer eligible for subsidized COBRA. Recently released guidance from the DOL is clear that premium assistance can last from April 1, 2021 through September 30, 2021 and will end earlier if an AEI becomes eligible for another group health plan, such as a plan sponsored by a new employer or a spouse's employer (not including excepted benefits, a QSEHRA, or a health FSA), or an AEI becomes eligible for Medicare, or an AEI reaches the end of their maximum COBRA continuation coverage period.

9. Must an employer offer COBRA if the previously terminated employee is currently working for another employer?

Maybe. Eligibility depends on eligibility for other employer sponsored health coverage. If the employee is working but not eligible for other coverage, then he or she would still be eligible for the COBRA subsidy. The IRS states in its clarifying guidance that premium assistance is available to a potential assistance eligible individual (AEI) until the individual is permitted to enroll in coverage under any other group health plan, which includes time the AEI is in a waiting period for another plan.

10. Must the employer offer COBRA if the employer has rehired the employee?

If an employee is rehired and eligible for employer coverage, then he or she would not be eligible for COBRA.

11. Must the employer offer COBRA if the previously terminated employee is not enrolled in but eligible for Medicare?

An individual who experienced an involuntary termination or reduction in hours is not eligible for a subsidy if they are eligible to enroll in Medicare. They do not need to be enrolled in Medicare, only eligible to enroll. Further, the IRS stated that an individual currently enrolled in Medicare who then becomes a qualified beneficiary may be eligible for COBRA, but not for premium assistance.

12. Does the subsidy apply to a former employee who is currently enrolled in Exchange healthcare coverage?

Yes. An individual who is a qualified beneficiary due to an involuntary termination or reduction in hours that is currently enrolled in health coverage through an Exchange may be eligible for premium assistance.

13. Does employer sponsored coverage include coverage eligible through a spouse's employer?

Yes. An individual who experienced an involuntary termination or reduction in hours who is eligible to enroll in coverage through a spouse's employer is not eligible to receive a COBRA subsidy.

14. Do these requirements apply to multiemployer/union plans?

Yes.

15. Does this apply to employers of all sizes?

The rules apply to all employers who are required to offer COBRA or state continuation coverage, regardless of their size. Recently released guidance from the DOL is clear that the ARPA premium assistance provisions apply to all private sector group health plan sponsors and unions subject to COBRA under the Employee Retirement Income Security Act of 1974 (ERISA). Further, the rules apply to State and local government sponsored plan subject to continuation under the Public Service Health Act (PSHA) and for group health insurance required under state "mini-COBRA" laws.

16. Does employer eligibility relate to the FFCRA?

No. The ARPA is not related to the Families First Coronavirus Response Act (FFCRA), signed into law in March 2020, and none of the FFCRA eligibility requirements apply to the ARPA requirements.

17. Does this apply to all individuals who experienced an involuntary termination or reduction in hours or only those who were enrolled in the employer health plans?

The ARPA COBRA subsidy rules only apply to assistance eligible individuals who were enrolled in employer health plans at the time of their involuntary termination or reduction in hours. In guidance released on May 18, 2021, the IRS clarified that to be eligible for premium assistance an AEI must (1) be covered under the group health plan on the day before the reduction in hours or involuntary termination of the covered employee's employment, and (2) lose eligibility for the coverage due to the reduction in hours or involuntary termination of the covered employee's employment.

18. I have a group who has an ex-employee on state continuation, she exhausted her federal COBRA. Does the subsidy apply to her?

Yes. Premium assistance under ARPA is generally available for continuation coverage under the Federal COBRA provisions, as well as for group health insurance coverage under comparable state continuation coverage (“mini-COBRA”) laws. According to guidance released by the IRS, if the original qualifying event was a reduction in hours or an involuntary termination of employment, COBRA premium assistance is available to individuals who have elected and remained on COBRA continuation coverage for an extended period due to a disability determination, second qualifying event, or an extension under State “mini-COBRA”, to the extent the additional periods of coverage fall between April 1, 2021, and September 30, 2021.

19. Do the subsidy requirements apply to self-funded plans?

Yes.

20. Is COBRA premium assistance available to an individual whose original COBRA 18-month COBRA period has expired, but who is entitled to an extension due to disability, second qualifying event, or State mini-COBRA?

Yes. In guidance IRS Notice 2021-46, released on July 26, 2021, the IRS states that if the original COBRA qualifying event was an involuntary termination or reduction in hours then COBRA premium assistance is available for an extended period due to disability determination, second qualifying event, or State mini-COBRA. The IRS provides this example:

Example 1: An individual who was provided a COBRA general notice is involuntarily terminated and elects COBRA continuation coverage effective October 1, 2019; the individual’s 18-month COBRA continuation period lapses March 31, 2021. On March 1, 2020, a disability determination letter is issued by the Social Security Administration providing that the individual was disabled as of November 1, 2019. The disability determination entitles the individual to the 29-month extended COBRA continuation coverage. The individual fails to notify the plan of the disability determination by April 30, 2020, which is 60 days after the date of the issuance of the disability determination letter as required under § 4980B(f)(6)(C). However, under the Emergency Relief Notices, the individual has one year and 60 days from the issuance of the disability determination letter to notify the plan of the disability to extend COBRA continuation coverage. On April 10, 2021, the individual notifies the plan of the disability and elects ongoing coverage from April 1, 2021. Assuming the individual is not eligible for other disqualifying group health plan coverage or Medicare, the individual is an Assistance Eligible Individual and is entitled to the COBRA premium assistance.

Timeline

1. When are the subsidies effective?

April 1, 2021. An Assistance Eligible Individual is entitled to receive COBRA premium assistance as of the first applicable period of coverage beginning on or after April 1, 2021. The IRS stated that a period of coverage is a monthly or shorter period with respect to which premiums are normally charged by the plan or issuer with respect to such coverage provided to employees and qualified beneficiaries.

2. When do the subsidies end?

Recently released guidance from the DOL is clear that premium assistance can last until September 30, 2021 but will end earlier if an AEI becomes eligible for another group health

plan, such as such as a plan sponsored by a new employer or a spouse's employer (not including excepted benefits, a QSEHRA, or a health FSA), an AEI becomes eligible for Medicare, or an AEI reaches the end of their maximum COBRA continuation coverage period.

3. If an employee was terminated November 2019 or later, and chose to elect coverage, do they have to pay for the coverage from November 2019-March 2021?

No. Assistance eligible individuals who are still within their maximum 18-month maximum COBRA period may elect subsidized COBRA on April 1 even if they did not previously elect COBRA, and they do not need to pay retroactive premiums back to their original COBRA qualifying event date. For more information on a "second chance" at COBRA enrollment review the questions below.

4. Does the subsidy apply to individuals who experienced a second COBRA qualifying event and have an extended maximum COBRA period?

Yes. An individual who experienced an involuntary termination or reduction in hours that later experienced a second COBRA qualifying event is allowed a subsidy beginning April 1, 2021 if they are still within their maximum COBRA period.

5. Are these changes permanent?

No. These are temporary changes that go into effect April 1, 2021 and end on September 30, 2021. Congress would need to enact new legislation to extend the subsidies. As of the date of publication of this document, April 8, 2021, no new legislation has been passed extending the premium assistance end date.

6. How much time does an assistance eligible individual have to enroll in subsidized COBRA?

Generally speaking, eligible AEIs have 60 days from the date they initially receive their COBRA election notice to elect COBRA continuation coverage. Recent guidance (Disaster Relief Notice 2021-01) from the DOL, the Treasury Department, and the IRS due to the COVID-19 National Emergency extends timeframes for certain actions related to health coverage under private-sector employment-based group health plans. The DOL stated in its April guidance that extensions provided under Disaster Relief Notice 2021-01 do not apply to the notices and elections related to COBRA premium assistance available through ARPA. AEIs must elect COBRA continuation with premium assistance within 60 days of receipts of notice or forfeit their right to COBRA with premium assistance. The IRS clarified in its May 18 guidance, that a potential AEI who elects COBRA with premium assistance, but declines COBRA retroactively may not after electing COBRA under ARPA later elect COBRA that begins at the time of the original qualifying event.

7. Once the subsidy period ends on September 30, 2021, will a qualified beneficiary's coverage automatically continue?

Yes. COBRA coverage will automatically continue after the subsidized period ends, and the payment for the first period of COBRA will be due according to the terms of the plan.

Premium Payment

1. How much are employers required to pay?

Employers must pay the entire cost of the COBRA premium but will recover lost premium payments through a payroll tax credit. Assistance eligible individuals will pay \$0.

2. Does the subsidy include the 2% COBRA administration fee?

Yes.

3. Does the subsidy include the cost of coverage for employees and their family members?

Yes. Employers will pay the entire cost of COBRA for both the assistance eligible individual and any family members enrolled in COBRA coverage.

4. How are the subsidies determined?

Subsidies are based on the COBRA rates that former employees are required to pay, plus the COBRA administrative fee, which is usually 2% of the cost of coverage.

5. How do self-funded plans determine premiums?

Self-funded plan premiums are based on the COBRA premium equivalent rates that employees are required to pay, plus the COBRA administrative fee, which is usually 2% of the cost of coverage.

6. Will we need to refund an assistance eligible individual that paid for COBRA coverage between April 1, 2021 – September 30, 2021?

According to recently released guidance from the DOL, an AEI must be treated, for purposes of COBRA, as having paid the full premium amount from April 1, 2021 through September 30, 2021. Premiums should not be collected from AEIs during this time. AEI's eligible for premium assistance, but who paid in full for periods of COBRA continuation coverage beginning on or after April 1, 2021 through September 30, 2021 should contact the plan administrator or employer sponsoring the plan to discuss a credit against future payments or a refund in certain circumstances.

Coverage Election

1. Is the subsidy required to cover all plans (medical, dental, and vision) or just medical?

COBRA premium assistance is available for COBRA continuation coverage of any group health plan, (such as vision-only and dental-only plans) except a health FSA offered under a cafeteria plan. COBRA premium assistance is not available for continuation coverage offered by employers for non-health benefits that are not subject to Federal COBRA (such as group life insurance). The IRS further states that a qualified beneficiary who is an assistance eligible individual under APRA is a qualified beneficiary with respect to any health coverage the qualified beneficiary was enrolled in prior to the qualifying event and for which the individual does not have a COBRA election in effect on April 1, 2021, even if the qualified beneficiary previously elected COBRA continuation coverage with respect to other coverage in which the qualified beneficiary was previously enrolled.

2. Can an assistance eligible individual change plans when they elect COBRA, or must they enroll in the plan they were previously enrolled in?

Yes. Recently released guidance from the DOL is clear that group health plans (GHPs) can choose to allow qualified beneficiaries to enroll in coverage that is different from the coverage they had at the time of the COBRA qualifying event. ARPA provides that changing coverage will not cause an individual to be ineligible for the COBRA premium assistance, provided that:

The COBRA premium charged for the different coverage is the same or lower than for the coverage the individual had at the time of the qualifying event;
 The different coverage is also offered to similarly situated active employees; and
 The different coverage is not limited to only excepted benefits, a QSEHRA, or a health FSA.

If the plan permits individuals to change coverage options, the plan must provide the individuals with a notice of their opportunity to do so. Individuals have 90 days to elect to change their coverage after the notice is provided.

3. If an employer no longer offers the health plan in which a previously covered individual was enrolled, in what COBRA health plan should the AEI be enrolled?

If an employer no longer offers the health plan that previously covered the potential assistance eligible individual, the individual must be offered the opportunity to elect the plan that a similarly situated active employee would have been offered that is most similar to the previous plan that covered the individual, even if the premium for the plan is greater than the premium for the previous plan. The other health coverage is eligible for premium assistance for the AEI and for a tax credit to the employer, plan or issuer.

4. Do enrolled assistance eligible individuals automatically receive the COBRA subsidy?

Yes. Assistance eligible individuals (AEI) who are enrolled in COBRA will automatically receive the subsidy. There is no requirement that an AEI opt in to the subsidy. AEIs will not receive a payment, but rather do not have to pay any of the COBRA premium for the period of coverage from April 1, 2021 through September 30, 2021. The premium is reimbursed directly to the employer, plan administrator, or insurance company through a COBRA premium assistance credit.

5. Are assistance eligible individuals automatically enrolled in COBRA on April 1?

No. Any assistance eligible individual (AEI) must affirmatively opt into COBRA coverage to receive the subsidy. AEIs who are still within their maximum COBRA coverage period are eligible to enroll and receive subsidized coverage. For more information on “second chance” COBRA elections review the questions below.

6. Are assistance eligible individuals able to add dependents that were not enrolled at the time of the COBRA qualifying event?

No. Only dependents who were enrolled at the time of the COBRA qualifying event may enroll in and receive subsidized coverage. Assistance eligible individuals (AEIs) may make changes to enrolled dependents if they experience a qualified life event.

Each COBRA qualified beneficiary may independently elect COBRA continuation coverage. If a family member did not elect COBRA continuation coverage when first eligible and that individual would still be an AEI and has an additional opportunity to enroll and qualify for the premium assistance.

7. How will COBRA administrators know that past terminations or reductions in hours were involuntary?

Coordinate with your COBRA administrator to determine what information they need to ensure only those enrolled in COBRA who experienced an involuntary termination or reduction in hours are receiving the subsidy.

8. If an assistance eligible individual (AEI) previously elected only dental or vision coverage, does the AEI cease to be eligible for a COBRA subsidy if the individual becomes eligible for other group health plan coverage or Medicare even if does not provide dental or vision benefits?

Yes. In guidance release on July 26, 2021 the IRS clarified that COBRA premium assistance ends when the AEI becomes eligible for disqualifying group health care coverage or Medicare, even if the new coverage does not include all the benefits the AEI previously elected under COBRA.

Second Chance

1. What does the phrase “second chance” period refer to?

“Second Chance” refers to an assistance eligible individual (AEI) who is still within their 18-month maximum COBRA period but either did not elect COBRA when they first became eligible or elected COBRA coverage but subsequently dropped. These AEIs have another chance to elect subsidized COBRA coverage starting on April 1, 2021.

2. When does the second chance period begin?

April 1, 2021.

3. Why does the second chance period begin in November 2019?

November 2019 which is 18 months prior to April 2021. According to guidance released by the IRS on May 18, 2021, a COBRA beneficiary who experienced an involuntary termination or reduction in hours starting in November 2019 or later has an opportunity to receive subsidized coverage starting April 2021. Guidance from the IRS clarified that the second chance enrollment does not extend the COBRA maximum period, so an assistance eligible individual with a qualifying event in November 2019 will only be eligible for the subsidy in April 2021, which is month 18 of their COBRA period. Note that in this example, an individual who experienced a second qualifying event would be eligible for subsidized coverage past April 1.

4. Is premium assistance retroactive to their original COBRA qualified event date?

No. The subsidy applies only from April 1, 2021 to September 30, 2021.

5. Does the second chance period apply to state continuation coverage?

Not necessarily. The ARPA extended election period commonly referred to as the second chance election, applies only to a group health plan that is subject to Federal COBRA. It does not apply to plans subject to continuation coverage requirements under a comparable State program; however, if a State law or program provides for a similar second chance election right, and an individual satisfies any State requirements then COBRA premium assistance is available for any resulting period of COBRA continuation coverage for periods of coverage from April 1, 2021, through September 30, 2021.

6. Can the assistance eligible individuals have a gap in coverage?

Yes. An assistance eligible individual (AEI) who is taking advantage of the second chance to enroll may elect subsidized COBRA coverage starting April 1, 2021 and does not need to elect retroactive coverage back to their COBRA qualifying event. This means that AEIs may have a gap in coverage.

7. Do previously eligible individuals who are taking advantage of the second chance to enroll need to pay retroactive COBRA premium?

No. Assistance eligible individuals (AEI) may but are not required to pay retroactive COBRA premiums. AEIs may choose to have a gap in coverage. Any AEI who wants continuous coverage must pay retroactive premium back to their COBRA qualifying event.

8. How do these new rules coordinate with the “Outbreak Period” guidance for COBRA elections?

The COBRA rules under the ARPA are separate from the recent Employee Retirement Income Security Act of 1974 (ERISA) deadline extensions from DOL Disaster Relief Notices 2020-01 and 2021-01 that allow a “disregard period” for the earlier of 12 months or the “outbreak period” for individuals to elect and pay for COBRA. As background, the “outbreak period” is defined as the time of the national emergency as declared by the President plus 60 days. The outbreak period guidance allows all COBRA eligible individuals not just assistance eligible individuals (AEI), to disregard the normal COBRA election and payment deadlines for a period of up to 12 months or the end of the outbreak period, whichever is earlier. Any AEI who is currently taking advantage of additional time to enroll in COBRA may elect starting April 1, 2021 to receive subsidized COBRA without paying retroactive premiums as is normally required under the Disaster Relief Guidance.

Recent guidance from the DOL states that the Disaster Relief Notice extended timeframes do not apply to AEIs who receive a notice of an election right under the ARPA premium assistance requirements. These AEIs have 60 days from the date they receive notice to elect subsidized COBRA coverage, or they forfeit their right to elect COBRA continuation coverage with premium assistance.

The IRS is clear that if an individual makes or owes COBRA premium payments for retroactive COBRA continuation coverage elected under the Disaster Relief Notice guidelines that those premiums owed will not affect eligibility for premium assistance under ARPA. The IRS states in guidance released on May 18, 2021, that neither making nor owing COBRA premium payments for retroactive COBRA continuation coverage for which the payment due date has been extended makes an individual ineligible for COBRA premium assistance.

Notice Requirements

1. What are the different notices that are required?

In April 7, 2021 the DOL through the Employee Benefits Security Administration (EBSA) released updated COBRA model notices to assist employers with notifying assistance eligible individuals (AEI) of their right to elect COBRA with premium assistance.

Qualified beneficiaries and AEIs must receive notice of their rights under the ARPA including: General notice to all qualified beneficiaries who have a qualifying event that is a reduction in hours or an involuntary termination of employment between April 1, 2021 through September 30, 2021. Recent guidance from the DOL states that this notice may be provided separately or with a COBRA election notice following a qualifying event.

A special notice of a second chance to elect COBRA with premium assistance to AEIs within their maximum COBRA period titled “Notice in Connection with Extended Election Period.” This requirement does not include those individuals whose maximum COBRA continuation

coverage period, if COBRA had been elected or not discontinued, would have ended before April 1, 2021 (generally, those with applicable qualifying events before October 1, 2019). This notice must be provided by May 31, 2021, which is 60 days after the premium assistance period begins on April 1, 2021.

A notice titled “Notice of Expiration of Premium Assistance” which explains that subsidized coverage will expire and includes the expiration date and explains that the individual may be eligible for coverage without premium assistance through Healthcare.gov. This notice is due 15-45 days before premium assistance ends.

The DOL has provided model notices for employers and issuers to use; however, plans and issuers may choose to provide their own notices. Recent guidance from the DOL is clear that notices must provide the following information:

The forms necessary for establishing eligibility for the premium assistance;
Contact information for the plan administrator or other person maintaining relevant information in connection with the premium assistance;

- A description of the additional election period (if applicable to the individual);
- A description of the requirement that the Assistance Eligible Individual notify the plan when he/she becomes eligible for coverage under another group health plan (not including excepted benefits, a QSEHRA, or a health FSA), or eligible for Medicare and the penalty for failing to do so;
- A description of the right to receive the premium assistance and the conditions for entitlement; and
- If offered by the employer, a description of the option to enroll in a different coverage option available under the plan.

The DOL updated Model Notices can be found here:

[General Notice & Election Notice](#)
[Notice in Connection with Extended Election Period](#)
[Alternative Notice](#)
[Notice of Expiration of Premium Assistance](#)

2. Are employers responsible for writing their own notices?

The DOL provided new and updated model notices for employer to use on April 7, 2021. Employers may update their current notices with custom verbiage, but we recommend that any custom language be reviewed by ERISA counsel to ensure it meets the requirements outlined by the DOL and the ARPA.

3. Who is responsible for sending the notices?

Employers are responsible for providing notice to assistance eligible individuals but may contract with COBRA administrators to distribute the notice.

4. When are the notices due?

The “Notice in Connection with Extended Election Period” notices are due to assistance eligible individuals no later than May 31, 2021.

The “Notice of Expiration of Premium Assistance” end of subsidy notices are due to individuals receiving subsidies between 15 and 45 days from the premium assistance expiration date.

Recent guidance from the DOL states that the extensions under Disaster Relief Notice 2021-01 do not apply; however, to the notices or the election periods related to COBRA premium assistance available under the ARPA. Plans and issuers must provide the notices according to the timeframes specified in the ARPA.

5. How do notices have to be delivered?

Recent guidance from the DOL is clear that unless modified by the ARPA, existing requirements for the manner and timing of COBRA notices continues to apply. Employers should review DOL and ERISA guidelines for information on proper distribution of COBRA notices and ensure that notices are delivered in a manner that is consistent with these rules. Generally speaking, employers must deliver notices in a manner that reasonably ensures receipt of the notice such as mailing to an assistance eligible individual's (AEI) home. Electronic delivery, such as posting to company website is only allowed if certain criteria are met. The best practice to ensure compliance with ERISA distribution rules is to mail hard copies of the notices to AEIs.

6. Do new notices have to be sent to all employees?

The DOL provided a new COBRA general notice and election notice that can be used for all employees from April 1, 2021 through September 30, 2021. The previous notice was modified to include ARPA subsidy language.

Notices for the Notice of Expiration of Premium Assistance and Subsidy Expiration apply only to assistance eligible individuals.

Penalties

1. What circumstances would cause an individual to be penalized?

The ARPA requires assistance eligible individuals to notify their former employer an offer of employer sponsored coverage or eligibility for Medicare. Failure to report new health coverage eligibility and remain on subsidized coverage may face a tax penalty. An assistance eligible individual who does not provide notice may face a Federal tax penalty of \$250 for each failure to notify. If the failure to provide notice is fraudulent the penalty will be the greater of \$250 or 110% of the COBRA premium assistance improperly received. The penalty will not apply if the individual's failure to provide notice was due to reasonable cause and not to willful neglect. The penalty is a tax penalty to the former employee and not a payment to the employer, plan, or issuer.

2. What is the penalty amount?

Failure to notify the former employer will result in a tax penalty of \$250. If the failure to provide notice is fraudulent the penalty will be the greater of \$250 or 110 percent of the COBRA premium assistance improperly received. The penalty will not apply if the individual's failure to provide notice was due to reasonable cause and not to willful neglect. The penalty is a tax penalty to the former employee and not a payment to the employer, plan, or issuer.

3. How is the penalty collected?

The penalty is a tax penalty to the former employee and not a payment to the employer, plan, or issuer.

Tax Credit

1. How is the tax credit determined?

The tax credit amount is directly related to the amount of premiums paid by the employer. According to IRS guidance released on May 18, 2021, the quarterly amount of the tax credit is the amount equal to the premiums not paid by assistance eligible individuals (AEI) for COBRA coverage under ARPA for the quarter. The amount of the premiums not paid by AEIs is the premium amount charged for COBRA coverage to other similarly situated covered employees and qualified beneficiaries. The premium amount also includes any administrative costs, generally a 2% fee.

2. How do self-funded plans determine their tax credit amount?

The tax credit amount is directly related to the amount of premiums paid by the employer. Self-funded plans will determine tax credits based on premiums paid not based on claims paid. Premiums for subsidized coverage will be determined by a self-funded plan's COBRA premium equivalent rates.

3. How does an employer or premium payee claim the premium assistance tax credit?

A premium payee claims the credit by reporting the credit and the number of individuals receive COBRA premium assistance on the designated lines of its federal employment tax returns. Generally speaking, that form is IRS Form 941 Employer's Quarterly Federal Tax Return. In anticipation of receiving the tax credit, a premium payee may:

- Reduce deposits of federal employment taxes up to the amount of the anticipated credit, including withheld taxes that it would otherwise be required to deposit and
- Request an advance on the amount of anticipated credit that exceeds the federal employment tax deposits available for reduction by filing IRS Form 7200, Advance Payment of Employer Credits Due to COVID-19. The Form 7200 may be filed after the end of the payroll period in which the premium payee became entitled to the credit.

4. Is the premium assistance tax credit available for those individuals who are not qualified beneficiaries under Federal COBRA?

No. Guidance released by the IRS on May 18, 2021, states that COBRA premium assistance is limited to the premium attributable to the coverage of the employee who was involuntarily terminated or had a reduction in hours qualifying event and that employee's spouse or dependent children who are qualified beneficiaries under Federal COBRA. This is true even if state continuation requires a group health plan to provide continuation to more individuals than spouses and dependents such as domestic partners. If the premium assistance provided by an employer covers assistance eligible individuals (AEI) and non AEIs then the premium amounts for COBRA continuation coverage are allocate first to the premiums for AEIs based on the cost of COBRA, and then to the premiums of non-AEIs. If the coverage for an individual who is not an AEI increases the total COBRA premium for all individuals, that incremental additional cost is not COBRA premium assistance for purposes of the credit. The IRS provides these examples:

Example 1: An employee and the employee's two dependent children are Assistance Eligible Individuals and have COBRA continuation coverage. COBRA continuation coverage also covers an individual who lives in the same household who is not an Assistance Eligible Individual. The amount the plan requires to be paid for COBRA continuation coverage for self-plus-two-or-more-dependents (which includes the individual who is not an Assistance Eligible Individual) is \$1,000 per month.

The amount the employee would pay (absent the COBRA premium assistance) for coverage for the employee and the two children (the Assistance Eligible Individuals) for COBRA continuation coverage is \$1,000 per month. The additional premium amount for coverage of the individual who is not an Assistance Eligible Individual is \$0 per month. The employee is entitled to apply the COBRA premium assistance for the full \$1,000 premium amount per month. The credit is \$1,000 per month.

Example 2: Same facts as [Example 1](#), except the employee has only one dependent child, and the plan charges \$800 per month for self-plus-one-dependent COBRA continuation coverage. The portion of the premium attributable to coverage for the individual and the individual's dependent child (both Assistance Eligible Individuals) is \$800 per month.

The employee is entitled to apply the COBRA premium assistance to the \$800 per month attributable to the Assistance Eligible Individuals. The incremental amount the employee pays for COBRA continuation coverage for the individual who is not an Assistance Eligible Individual is \$200 per month, so the employee's total premium payment is \$200 per month. The credit is \$800 per month.

5. Where can employers and premium payees get the forms for the payroll tax credit?

On May 18, 2021, the IRS released guidance for obtaining the premium assistance tax credit. The guidance confirmed that premium payees will use [IRS Form 941](#), the Employer's Quarterly Federal Tax Return to claim the credit. To obtain advance payments of the premium assistance tax credit premium payees should use [IRS Form 7200](#).

6. How is the premium assistance tax credit claimed for a multiemployer plan or other premium payee that does not have employment tax liability?

In guidance released on May 18, 2021, the IRS stated that if the premium payee entitled to the credit does not have employment tax liability, then the premium payee should claim the credit on IRS form 941 for the quarter in which the premium payee becomes entitled to the credit.

7. How is the premium assistance tax credit claimed for an employer who provides subsidized COBRA to former employees?

According to IRS guidance released on May 18, 2021, the amount of premium tax credit that an employer receives does not include any amount of subsidy that an employer would have otherwise provided to an AEI absent premium assistance requirement. The IRS provides these examples:

Example 1: Absent the COBRA premium assistance, the common law employer requires individuals electing COBRA continuation coverage to pay \$500 per month. The credit is \$500 per month.

Example 2: The common law employer requires active employees to pay \$200 per month for health coverage. Absent the COBRA premium assistance, for involuntarily terminated employees, severance benefits include continued health coverage at the cost of \$200 per month for three months after termination. After the three-month severance period, the terminated employee must pay \$1,000 per month for the remainder of COBRA continuation coverage. The common law employer considers the loss of coverage to occur on the last day coverage is in effect before the severance benefits begin; that is, the common law employer

considers the three-month severance period (during which the employer pays \$800 toward the cost of the terminated employee's COBRA continuation coverage) to be part of the terminated employee's COBRA continuation period of coverage.

8. In a case of a merger or acquisition, which entity is the premium payee entitled to claim the COBRA premium assistance credit for coverage elected by assistance eligible individuals?

If the seller remains obligated to provide COBRA to qualified merger and acquisition (M&A) beneficiaries after a business reorganization, then the entity that maintains the group health plan is the premium payee entitled to claim the COBRA premium assistance tax credit. If the common law employer is not obligated to provide COBRA to assistance eligible individuals then the common law employee is not entitled to the COBRA premium assistance tax credit.

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